92

HIGH COURT OF CHHATTISGARH : BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal No.964/2006

Appellant/Non-applicant No.2 Owner of the Vehicle CG 08 ZB 0468	:	Santosh Kumar Agrawal, R/o Through: Raj Kumar Gupta, Mathpara, Rajnandgaon, Tahsil & Distt. Rajnandgaon (C.G.)

Versus

Respondents	:	1. Shobha Ram S/o Dhanau Ram, Aged about 38 years, R/o Village Salhekala, P.S. Chuikhadan, Tahsil Khairagarh, Distt. Rajnandgaon (C.G.) (Claimant/Applicant)
Non-applicant No.1/Driver	:	2. Ishwar Kripal, S/o Vishu Ram Kripal, Aged 24 years, R/o Marekpathara P.S. Dondilohara, Tahsil: Balod, Distt. Durg (C.G.)
Non-applicant No.3/Insurer	:	3. National Insurance Co. Through: Branch Manager, Kamthi Line, Rajnandgaon (C.G.)

Miscellaneous appeal under Section 173 of the Motor Vehicle Act, 1988

Present: Shri Amiyakant Tiwari, counsel for the appellant.
Shri Raj Awasthi, counsel for respondent No.3
Respondents No.1 & 2 absent, though served.

ORAL ORDER

(Passed on 4th December,2007)

Appeal is heard finally today.

2. In this appeal by owner, the appellant is aggrieved by an award dated 19-04-2006 passed by Additional Motor Accidents Claims Tribunal, Khairagarh (hereinafter referred to as "the MACT, Khairagarh") in Claim Case No.03/2005 whereby while exonerating the Insurance Company the liability to pay compensation of Rs.1,14,000/- was fastened on the appellant/owner.

3. Brief facts are that on 13-04-2004, the appellant/claimant had gone to Nagpur for purchasing Chillis and was returning with

93

the goods in Matador No. CG 08 ZB 0468. Near village Chirchari, P.S. Lalbag, District Rajnandgaon, the matador turned turtle due to which one Sadhelal who was also travelling in the said matador died and the appellant and 2 other persons i.e. Narayan Singh Rajput and Itwari Ram sustained injuries.

4. Legal Representatives of Sadhelal , Narayan Singh Rajput and Itwari Ram filed Claim Cases No.52/2005, 97/2005 and 51/2005 before the MACT, Rajnandgaon while appellant/claimant herein filed an application under Section 166 of the Motor Vehicles Act before the MACT, Khairagarh.

5. In all the three claim cases, the MACT, Rajnandgaon rejected the insurer's plea that there was a breach of policy and awarded compensation against the insurance company. Learned counsel for the respondent/ Insurance Company did not dispute that the Insurance Company has not preferred any appeal against those awards passed by the MACT, Rajnandgaon.

6. Shri Amiyakant Tiwari, learned counsel for the appellant raised the sole contention that in view of the finding recorded by the MACT, Khairagarh in para 17 of the impugned award that the appellant/claimant was the owner travelling with the goods in the said matador, the respondent No.3/Insurance Company was under a statutory liability to pay compensation. No other ground was urged.

7. On the other hand, learned counsel for the respondents/Insurance Company also did not dispute the finding recorded by the MACT, Khairagarh in para 17 of the impugned award that the appellant/claimant was the owner travelling with the goods in the said matador.

8. The only question that arises for determination is, whether the respondent No.3/Insurance Company was statutorily liable to cover the risk of the owner of the goods travelling in the vehicle with the goods.

9. Having heard the rival contentions, I have perused the record.

10. Section 147(1)(b)(i) of the Motor Vehicles Act reads as under:

> "**147. Requirements of policies and limits of liability.** – (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which–
>
> (a) xxxx xxxx xxxx
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub- section (2)–
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> xxxx xxxx xxxx"

11. It is thus clear, that the present case clearly falls under the above provision because undisputedly the appellant/claimant was the owner travelling with the goods in Matador No.CG 08 ZB 0468 which met with an accident. The Insurance Company was thus under a statutory liability to cover the risk of the owner of the goods travelling in the matador along with the goods. The impugned award where by the appellant/Insurance Company was exonerated is therefore liable to be set aside.

12. In view of the above discussion, the appeal is allowed. The respondent No.3/Insurance Company shall be liable to pay the compensation awarded by the MACT, Khairagarh.

Sd/-
Dilip Raosaheb Deshmukh
Judge

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